



## ADMINISTRATION TEAM

January 25, 2013

9:00 am

AGC Southern District Building

3601 20th Street East

Fife, WA 98424

Phone: 253-896-0033 Toll Free: 800-637-7717

### Attending:

✓	<b>Ashley Davis</b> Mowat Const.		<b>Ken Shovlin</b> Guy F. Atkinson	✓	<b>Anthony Sarhan</b> FHWA
✓	<b>Jerry Brais</b> King County	✓	<b>Darrel McCallum</b> WSDOT ER	✓	<b>Glenn Schneider</b> WSDOT SWR
✓	<b>Marylou Nebergall</b> WSDOT OR	✓	<b>Craig McDaniel</b> WSDOT Construction	✓	<b>Mark Scoccolo</b> SCI Infrastructure
✓	<b>Mike Hall</b> Tucci & Sons	✓	<b>Tina Nelson</b> Kitsap County	✓	<b>Aleta Borschowa</b> WSDOT NWR
✓	<b>Roger Palfenier</b> Totem Electric		<b>Andy Thompson</b> Granite Construction	✓	<b>Greg Waugh</b> Max J. Kuney Const.
✓	<b>Denys Tak</b> WSDOT Construction		<b>Adam Lybbert</b> Penhall Construction		<b>Corey Christensen</b> KLB Construction
✓	<b>Jim Prouty</b> Granite Construction	✓	<b>Jenna Fettig</b> WSDOT Construction		

### OPEN MEETING

Craig McDaniel and Greg Waugh opened the meeting at 9:00am.

Craig informed the group of recent organizational changes at Headquarters Construction. Tom Baker from the HQ Materials Lab and Mark Gaines from the HQ Construction Office are now on the 520 bridge project. Assistant State Construction Engineers are now providing support to their PEs for both roadway and bridge issues, there are no longer assistants supporting only roadway issues or structures issues. Dave Erickson is managing all the assistants while Mark is on the 520 project. Denys Tak has been hired as the Administration Assistant to Craig McDaniel and will be taking over for Randy Dubigk on the AGC Admin Team now that Randy has retired. Denys has been a member of the AGC Roadway Team. Some may know him from his role on that team.

### **Team membership**

Greg Waugh has not been able to reach Adam Lyybert from Penhall so that position may be open. Team members should begin looking for a replacement. Greg could not find a current contact list for the team on the website so WSDOT will update the contact list and distribute it to the team. Tina felt it would add to the team to have someone from Highways & Local Programs to provide the perspective from local agencies that aren't a part of the APWA. Dave Mounts was suggested.

The minutes from the November 2012 meeting were discussed and no issues were brought forward. The minutes will be posted on the web page.

### **Upcoming Project**

Glenn asked about a project in Spokane using a track laying machine. Craig said that the project is a design-bid-build project. Specifying use of the track laying machine seems to be driving up the risk. WSDOT should consider not specifying use of the track laying machine.

### **Call Before You Dig**

There have been some changes to the Call Before you Dig guidance. Mark Scoccolo said the biggest changes are that the area you dig is marked in white paint prior to calling. If you do have a strike you have to report it, and there is a new system for doing that. It is called DIRT (Damage incident Reporting Tool). You have 40 days to report a strike. The marks put down needed to be maintained by the contractor. Now, the contractor has to maintain marks for 45 days. You can call for a refresh, but a reasonable amount of time should pass – don't abuse calling to have the marks refreshed. After 40 days you may want to call the locator in and have them mark again. If someone files a complaint and there is a violation, they will get a letter with their fine. The fine gets larger each time and the contractor will be pulled in front of a safety committee. The AG's office will enforce the penalty. Training and education will waive the penalty. White paint is not a utility color paint, it is an outline color. Mark recommended that the marks are documented with photos before they are destroyed. NUCA Washington has a Dig Safe Training education program. Mark said that typically the agencies know where the objects are. If you do discover unmarked utilities, you need to call the owner out to map it before it is buried. If you can figure it out based on surface conditions, the agency doesn't have to mark it. This is for water only. Design locates are still allowed with three business days for turnaround. If the area is very remote, they can get around some of the outlining requirements. Most of the law encourages locators to be on site with the operators because that is how you prevent hits. After Oregon passed a similar law, hits were reduced greatly. Due to the pipes act, revisions made to the process have to address the nine points of safety, but the new approach covers this. Cities are on one call. There is a limited length to how much of an area you can call for, it is roughly a city

block. Anything over 700 feet is a large project and you have to set up a meeting with the locate group or call more than once.

### **Force Account**

Aleta said that at the last meeting, they decided to go back and look at how force account was set up. Mark remembered some elements of the markup structure and Jerry brought some documentation. Aleta looked at 10 other states with similar business structures and cost of living and compared WSDOT's markups to theirs. WSDOT had the highest markup rates of the 10 states. Some of the language is different and labor is managed differently, but materials and equipment markups are similar but lower in the other states. Drug testing has affected WSDOT's markups and Aleta could not determine if other states have drug testing. Aleta would like to speak with Ron Howard and will work on this with Mark.

Mark went through an analysis of the markup structure and it hasn't changed much since the '80s except drug testing. The structure is pretty much an industry standard and the drug testing brought it to 29%. In the past, the first 40 hours was the daily rate and after it was the weekly rate. They decided to go with the monthly rate which is more reflective of the cost of the contractor. Aleta found that most other states she looked at are working with the monthly rate. Only one other state allows for the use of small tools, most states prohibit that. Mark brought up an analysis performed in the past that compared WSDOT to other contracting agencies in Washington. WSDOT was very similar to others in terms of cost. The exercise used a scenario and ran it through each agencies process. Although the processes were very different, the cost was nearly the same. Something that sets WSDOT aside from the other states could be that Caltrans for example, has standard bid items for items included.

The 29% was decided on around the year 2000. Anthony said the federal requirements are that it fit in with what the law allows. Craig said some of the language is to compensate the contractor for actual costs. Sometimes that gets abused. Sometimes it was intended to be incidental to another bid item. The Project Engineers are directly involved in Force Account. Most contractors don't ask, but from time to time, some will purchase a brand new tool and look for reimbursement for the whole tool. Most of the time, WSDOT's Force Account work is called out as a bid item. WSDOT should look to tighten up the language so Force Account so it can be consistent statewide. Mark said one of the biggest challenges is when the inspector won't put a worker and their equipment on the reports. Also it is difficult when there is equipment that isn't on the list. There are also issues with sub-tier contractors where a hired truck is working and there is an assumption that there is already overhead and then there is a markup. The problem is in the Standard Specifications and the Construction Manual. Aleta also mentioned there is a real problem with getting invoices from the contractor a long time after the work happened, rather than the contractor and the agency agreeing upon what was done on a daily basis. Standby has been really unclear and the issues there can become contentious. Mark suggested putting a cap on how long the contractor has

to get the invoices or documentation in – like 90 days. Force Account invoices shouldn't be a surprise. It's a problem when you have to go back and determine. It's also been difficult to determine what to do about attachments. Most people are using monthly bluebook rates and looking at the discounts. Pretty much every state looks the same. There are a lot of attachments that the owner gets the benefit of. The attachments need to be agreed on. The project engineers have the description. Is it the definition of overhead that needs to be changed? A lot of the jobs now don't even have a superintendent, they have working foreman. We have exceptions and these need to be spelled out to the project engineers. Tina has had issues where FEMA will not recognize WSDOT's F.A. rates. Force Account costs both the contractor and WSDOT a lot of money, although it is necessary. Unfortunately, overhead is going up and these markups are no longer working. Jim mentioned that there is an issue with consistency, at the end of the day you need to come to an agreement. On the owner's side, there is a perception that Force Account is a gravy train for the contractor and that may be why there is so much argument about it. Aleta said that a great thing about starting over is educating the inspectors why we do business the way we do. Education is really an important part with Force Account. The inspector has to understand the bigger picture. The use of consultants can be problematic. There is a perception that Force Account is wasteful but this perception needs to change. Aleta will read the Lean process and send out items to the team for input.

Mark distributed information on force account markups. They came up with a typical event and calculated them using WSDOT's process, WSDOC's process and UW's process and they outcome was very close. The last page looks at standard bid items for Caltrans that are excluded for mobilization that is different than at WSDOT. WSDOT can put in a maximum or minimum amount. There was concern that such an item would encourage penny bids. WSDOT limits mobilization to costs that will be incurred during the first 10% of the project and other overhead has to be distributed equally through the other bid items. Caltrans has bid items for overhead and construction site management. The contractor gets paid per day for the site management. Caltrans is the only state that does this. In this approach, when you add days it accounts for the overhead. The team wasn't sure how to account for subs.

### **Lean Initiative**

Craig took a week-long course on the Lean initiative. There is a quality effort and an efficiency effort, but it recognizes the constraints WSDOT has with laws and such. It is looking for value in what we do. WSDOT has been doing things the same way for a long time and there must be processes that can be updated and become more efficient. Craig recommended that Aleta use the Lean process to look at the Force Account process. Craig will send Aleta the documents from Lean training. The process is that you decide where the value is and then you question the process you are using.

### **Buy America**

Anthony briefed the group on a memo issued by FHWA that clarifies what Buy America applies to. Buy America only applies to a manufactured item if it is predominately iron or steel. It does not apply to miscellaneous items like nuts, bolts or individual parts of other items. For example, the nuts and bolts in a VMS sign would not count. Craig will send the memo to the team. Buy America may not apply to fittings. It's looking for the bulk iron and steel items. Anthony says that for a manufactured item predominately iron and steel, so in the example of a pump, the pump is subject while the fasteners and such are not. This doesn't change the definition of temporary versus permanent. The recourse for a project that doesn't meet the requirement is the same – the whole project is not eligible for federal funds. You may see a big expansion of Buy America because it can now apply to contracts that don't have federal funds through the changes in Map 21. The utilities are subject to Buy America on those projects. There are some particulars. If there is a state law that would make the work not eligible, buy America would not apply. Utilities that are on state highways by franchised are not eligible. FHWA is not certain what it means for public utilities or utilities that are not on state rights of way. Regardless of who does the work, it applies.

#### **Sublet Request Approval**

Jim asked about sublet approval and what the guidelines are on WSDOT's side. What does WSDOT look at? Jim would like to tie this in with apprenticeship. WSDOT does not use the sublet request to enforce who works on the project. WSDOT uses the sublet request to determine who is working on the project, which L&I is notified of. Also, we need to make sure that the general contractor performs 30% of the work and what affidavits we will need to look at. In Mark's experience, WSDOT has denied a request to sublet but this was because the subcontractor was being paid more than the prime contractor. Aleta has denied some sublet requests for penny bid items that the request to sublet is for \$60,000 instead of \$3.60. This doesn't look right when there is condition of award DBE work. Anthony agreed and cautioned the team about that situation. Jim's situation is that when the contract has apprentice utilization requirements, the prime contractor is on the hook in terms of performance, but in order to meet the requirement, subcontractors as well must use apprentices. The primes prequalification can be revoked, but the prime has no teeth to encourage the subcontractors to comply. And the subcontractors don't have to be prequalified so they are not threatened if they don't comply. Jim wondered if the approval of the request to sublet could consider apprentice utilization. MaryLou said that WSDOT couldn't reject a request to sublet over this issue. It is the contractor's responsibility to determine how they will meet the apprentice utilization requirement and manage that effort. Perhaps there are other ways to deal with this issue, which has been a problem for years, especially with smaller subcontractors with small established crews. It's a major topic of discussion at the preconstruction meeting that the contractor has with their subcontractors. This is especially a problem for the paving contractors. Perhaps subcontractors can provide two different prices at bid time, one with apprentices and one without. What is the enforcement mechanism when the subcontractor signs a subcontract that says they

have to do this and then they don't? Mark suggested adding a bid item to the contract and subletting it to subcontractors so they can get paid for apprentice utilization. This might be a good issue to bring to the committee. The biggest problem for smaller subcontractors is that they cannot get an apprentice or it is not feasible for them to get apprentices from the program. WSDOT does recognize the impacts that conflicting requirements may have on a contractor's ability to meet the apprentice utilization requirement.

### **Disparity Study Update**

Craig went over a handout on the new Draft Disparity Study with the team. This is more a bigger picture item and it won't affect the goals seen on each contract. Some of the questions the study was meant to address were: are there areas where there is no disparity, should we have race specific goals, or races that are excluded? WBE is one area that jumps out at you, so is African American. Minority women are counted both in WBA and the count for the minority group they belong to. Greg explained how ODOT's program differs because they have race specific goals. Team members felt that the document did not reflect the comments made when the team met with the Disparity Study Consultant. Craig informed the team that this handout is a summary and the team's comments are included in Appendix J of the draft disparity study. The document has to do with the statewide goal compared to what was attained statewide, so contractors need to recognize that it doesn't mean that the contractors didn't achieve their goals, it just means that WSDOT didn't set high enough goals to meet the program requirements. Craig believes there may be a lot of participation that is not claimed, either due to missing quarterly reports, or to voluntary participation that is not accounted for. The project office tries to catch it on the request to sublet to see that the subcontractor is marked as a DBE. Anthony said that the contractors do what they are forced to do as a condition of award, but they are not going above and beyond to achieve the race neutral portion. If a DBE subcontractor performs more work than anticipated, this is taken into account on the quarterly report of amounts paid. Craig explained to the group that the number is a recommendation, but that there may be adjustments to the number because past discrimination or limited available firms. The disparity study establishes a foundation to work from, the state comes up with a plan and FHWA approves the plan. DBE use on state-funded jobs is something that FHWA looks at for the voluntary goal. WSDOT cannot put DBE requirements on state funded projects. Availability is a consideration of the Disparity Study. There seemed to be agreement that the contractors would be willing to report amounts paid to DBEs on state funded projects. The DBE should never rent or buy equipment from the prime contractor. It could be that they are just providing traffic control labor. In that case, they only get credit for the people, not the barrels.

### **Change Order Process**

The change order process is going through a Lean effort. One observation is that the contractor always takes all the time that they are allowed to sign the change order and

get it back. Craig asked the group to think about the change order process and look for efficiencies. Aleta has had to use unilateral changes orders to move the process along swiftly and provide prompt payment. Craig said this should be the exception to the rule. The contractors expressed that it is not always on the contractors to get the change orders in and there is a perception that WSDOT is notoriously slow at drafting the change order. Aleta said that she has had issues getting the contractor to sign an agreed upon change order. It is harder when there are subcontractors involved. ODOT pays interest after 90 days of receiving the change order from the contractor. Mark said prompt payment was revised to apply to any undisputed amounts. Sometimes it is the final payment that gets hung up, but you make a monthly progress payment. Local agencies may have the ability to make payments without a change order in the system but WSDOT does not.

### **New Business for 2013**

- Craig will let the team know more about the Disparity Study.
- Craig asked the project engineers for feedback about the Lean Process and may be going out with a survey.
- There are people in the DBE Directory that are out of business or no longer perform the type of work they are listed for. The Disparity Study Accounted for this and OMWBE may be addressing that issue now.
- It has been asked if Equipment Watch is the best source for equipment prices. Greg feels that equipment watch is the best source to use for equipment prices.
- Is force account being used for items that could be bid items?
- Where are we at with erosion control labor? In Aleta's experience, having lump sum erosion control has led to the contractor taking some innovative approaches.
- Having the contractor submit an equipment list should be a standard spec.
- There is interest in requiring certified payrolls whether it is federal aid or not.
- The subcontractors are wanting payment very quickly and there are projects where the prime has paid the sub and then months down the road, a measurement or payment situation comes up. There should be proper and accurate measure of quantities, these adjustments are being seen for rail, fencing, dirt, crushed surfacing.
- This also brings up the lack of timely pay notes there is not consistency here. This is where SharePoint will come in handy.
- The DBE joint checking allowance needs to be addressed. There have been situations where the bank cleared a joint check deposited to the DBE. Perhaps this language could be tightened.
- There is a concern that some contractors might challenge the tribe that the tax it applied to only part of the contract and not all.
- The credibility of the bid date has been lost for Puyallup River. The team members agreed that the project should have been pulled from ad.

**Schedule and location of future meetings, 2013:**

All dates and location are subject to change.

AGC Southern District Building  
9:00 AM – 12:00 PM

February 22

March 22

April 26

May 24

June TBD if needed